

**AMENDMENT IN THE NATURE
OF A SUBSTITUTE TO H.R. 4049
OFFERED BY**

Strike all after the enacting clause and insert the
following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Privacy Commission
3 Act”.

4 SEC. 2. FINDINGS.

5 The Congress finds the following:

6 (1) Americans are increasingly concerned about
7 their civil liberties and the security and use of their
8 personal information, including medical records, edu-
9 cational records, library records, magazine subscrip-
10 tion records, records of purchases of goods and other
11 payments, and driver’s license numbers.

12 (2) Commercial entities are increasingly aware
13 that consumers expect them to adopt privacy policies
14 and take all appropriate steps to protect the per-
15 sonal information of consumers.

16 (3) There is a growing concern about the con-
17 fidentiality of medical records, because there are in-

1 adequate Federal guidelines and a patchwork of con-
2 fusing State and local rules regarding privacy pro-
3 tection for individually identifiable patient informa-
4 tion.

5 (4) In light of recent changes in financial serv-
6 ices laws allowing for increased sharing of informa-
7 tion between traditional financial institutions and in-
8 surance entities, a coordinated and comprehensive
9 review is necessary regarding the protections of per-
10 sonal data compiled by the health care, insurance,
11 and financial services industries.

12 (5) The use of Social Security numbers has ex-
13 panded beyond the uses originally intended.

14 (6) Use of the Internet has increased at as-
15 tounding rates, with approximately 5 million current
16 Internet sites and 64 million regular Internet users
17 each month in the United States alone.

18 (7) Financial transactions over the Internet
19 have increased at an astounding rate, with 17 mil-
20 lion American households spending \$20 billion shop-
21 ping on the Internet last year.

22 (8) Use of the Internet as a medium for com-
23 mercial activities will continue to grow, and it is esti-
24 mated that by the end of 2000, 56 percent of the

1 companies in the United States will sell their prod-
2 ucts on the Internet.

3 (9) There have been reports of surreptitious
4 collection of consumer data by Internet marketers
5 and questionable distribution of personal information
6 by on-line companies.

7 (10) In 1999, the Federal Trade Commission
8 found that 87 percent of Internet sites provided
9 some form of privacy notice, which represented an
10 increase from 15 percent in 1998.

11 (11) The United States is the leading economic
12 and social force in the global information economy,
13 largely because of a favorable regulatory climate and
14 the free flow of information. It is important for the
15 United States to continue that leadership. As na-
16 tions and governing bodies around the world begin
17 to establish privacy standards, these standards will
18 directly affect the United States.

19 (12) The shift from an industry-focused econ-
20 omy to an information-focused economy calls for a
21 reassessment of the most effective way to balance
22 personal privacy and information use, keeping in
23 mind the potential for unintended effects on tech-
24 nology development, innovation, the marketplace,
25 and privacy needs.

1 **SEC. 3. ESTABLISHMENT.**

2 There is established a commission to be known as the
3 “Commission for the Comprehensive Study of Privacy
4 Protection” (in this Act referred to as the “Commission”).

5 **SEC. 4. DUTIES OF COMMISSION.**

6 (a) STUDY.—The Commission shall conduct a study
7 of issues relating to protection of individual privacy and
8 the appropriate balance to be achieved between protecting
9 individual privacy and allowing appropriate uses of infor-
10 mation, including the following:

11 (1) The monitoring, collection, and distribution
12 of personal information by Federal, State, and local
13 governments, including personal information col-
14 lected for a decennial census, and such personal in-
15 formation as a driver’s license number.

16 (2) Current efforts to address the monitoring,
17 collection, and distribution of personal information
18 by Federal and State governments, individuals, or
19 entities, including—

20 (A) existing statutes and regulations relat-
21 ing to the protection of individual privacy, such
22 as section 552a of title 5, United States Code
23 (commonly referred to as the Privacy Act of
24 1974) and section 552 of title 5, United States
25 Code (commonly referred to as the Freedom of
26 Information Act);

1 (B) legislation pending before the Con-
2 gress;

3 (C) privacy protection efforts undertaken
4 by the Federal Government, State governments,
5 foreign governments, and international gov-
6 erning bodies;

7 (D) privacy protection efforts undertaken
8 by the private sector; and

9 (E) self-regulatory efforts initiated by the
10 private sector to respond to privacy issues.

11 (3) The monitoring, collection, and distribution
12 of personal information by individuals or entities, in-
13 cluding access to and use of medical records, finan-
14 cial records (including credit cards, automated teller
15 machine cards, bank accounts, and Internet trans-
16 actions), personal information provided to on-line
17 sites accessible through the Internet, Social Security
18 numbers, insurance records, education records, and
19 driver's license numbers.

20 (4) Employer practices and policies with respect
21 to the financial and health information of employees,
22 including—

23 (A) whether employers use or disclose em-
24 ployee financial or health information for mar-

1 keting, employment, or insurance underwriting
2 purposes;

3 (B) what restrictions employers place on
4 disclosure or use of employee financial or health
5 information;

6 (C) employee rights to access, copy, and
7 amend their own health records and financial
8 information;

9 (D) what type of notice employers provide
10 to employees regarding employer practices with
11 respect to employee financial and health infor-
12 mation; and

13 (E) practices of employer medical depart-
14 ments with respect to disclosing employee
15 health information to administrative or other
16 personnel of the employer.

17 (5) The extent to which individuals in the
18 United States can obtain redress for privacy viola-
19 tions.

20 (b) FIELD HEARINGS.—

21 (1) IN GENERAL.—The Commission shall con-
22 duct at least 2 field hearings in each of the 5 geo-
23 graphical regions of the United States.

24 (2) BOUNDARIES.—For purposes of this sub-
25 section, the Commission may determine the bound-

1 aries of the five geographical regions of the United
2 States.

3 (c) REPORT.—

4 (1) IN GENERAL.—Not later than 18 months
5 after appointment of all members of the
6 Commission—

7 (A) a majority of the members of the Com-
8 mission shall approve a report; and

9 (B) the Commission shall submit the ap-
10 proved report to the Congress and the Presi-
11 dent.

12 (2) CONTENTS.—The report shall include a de-
13 tailed statement of findings, conclusions, and rec-
14 ommendations, including the following:

15 (A) Findings on potential threats posed to
16 individual privacy.

17 (B) Analysis of purposes for which sharing
18 of information is appropriate and beneficial to
19 consumers.

20 (C) Analysis of the effectiveness of existing
21 statutes, regulations, private sector self-regu-
22 latory efforts, technology advances, and market
23 forces in protecting individual privacy.

24 (D) Recommendations on whether addi-
25 tional legislation is necessary, and if so, specific

1 suggestions on proposals to reform or augment
2 current laws and regulations relating to indi-
3 vidual privacy.

4 (E) Analysis of purposes for which addi-
5 tional regulations may impose undue costs or
6 burdens, or cause unintended consequences in
7 other policy areas, such as security, law en-
8 forcement, medical research, or critical infra-
9 structure protection.

10 (F) Cost analysis of legislative or regu-
11 latory changes proposed in the report.

12 (G) Recommendations on non-legislative
13 solutions to individual privacy concerns, includ-
14 ing education, market-based measures, industry
15 best practices, and new technology.

16 (d) ADDITIONAL REPORT.—Together with the report
17 under subsection (c), the Commission shall submit to the
18 Congress and the President any additional report of dis-
19 senting opinions or minority views by a member of the
20 Commission.

21 (e) INTERIM REPORT.—The Commission may submit
22 to the Congress and the President an interim report ap-
23 proved by a majority of the members of the Commission.

1 **SEC. 5. MEMBERSHIP.**

2 (a) NUMBER AND APPOINTMENT.—The Commission
3 shall be composed of 17 members appointed as follows:

4 (1) 4 members appointed by the President.

5 (2) 4 members appointed by the majority leader
6 of the Senate.

7 (3) 2 members appointed by the minority leader
8 of the Senate.

9 (4) 4 members appointed by the Speaker of the
10 House of Representatives.

11 (5) 2 members appointed by the minority leader
12 of the House of Representatives.

13 (6) 1 member, who shall serve as Chairperson
14 of the Commission, appointed jointly by the Presi-
15 dent, the majority leader of the Senate, and the
16 Speaker of the House of Representatives.

17 (b) DIVERSITY OF VIEWS.—The appointing authori-
18 ties under subsection (a) shall seek to ensure that the
19 membership of the Commission has a diversity of views
20 and experiences on the issues to be studied by the Com-
21 mission, such as views and experiences of Federal, State,
22 and local governments, the media, the academic commu-
23 nity, consumer groups, public policy groups and other ad-
24 vocacy organizations, business and industry (including
25 small business), the medical community, and the financial
26 services industry.

1 (c) DATE OF APPOINTMENT.—The appointment of
2 the members of the Commission shall be made not later
3 than 30 days after the date of the enactment of this Act.

4 (d) TERMS.—Each member of the Commission shall
5 be appointed for the life of the Commission.

6 (e) VACANCIES.—A vacancy in the Commission shall
7 be filled in the same manner in which the original appoint-
8 ment was made.

9 (f) COMPENSATION; TRAVEL EXPENSES.—Members
10 of the Commission shall serve without pay, but shall re-
11 ceive travel expenses, including per diem in lieu of subsist-
12 ence, in accordance with sections 5702 and 5703 of title
13 5, United States Code.

14 (g) QUORUM.—A majority of the members of the
15 Commission shall constitute a quorum, but a lesser num-
16 ber may hold hearings.

17 (h) MEETINGS.—

18 (1) IN GENERAL.—The Commission shall meet
19 at the call of the Chairperson or a majority of its
20 members.

21 (2) INITIAL MEETING.—Not later than 45 days
22 after the date of the enactment of this Act, the
23 Commission shall hold its initial meeting.

24 **SEC. 6. DIRECTOR; STAFF; EXPERTS AND CONSULTANTS.**

25 (a) DIRECTOR.—

1 (1) IN GENERAL.—On or after October 1,
2 2000, the Commission shall appoint a Director with-
3 out regard to the provisions of title 5, United States
4 Code, governing appointments to the competitive
5 service.

6 (2) PAY.—The Director shall be paid at the
7 rate payable for level III of the Executive Schedule
8 established under section 5314 of such title.

9 (b) STAFF.—The Director may appoint staff as the
10 Director determines appropriate.

11 (c) APPLICABILITY OF CERTAIN CIVIL SERVICE
12 LAWS.—

13 (1) IN GENERAL.—The staff of the Commission
14 shall be appointed without regard to the provisions
15 of title 5, United States Code, governing appoint-
16 ments in the competitive service.

17 (2) PAY.—The staff of the Commission shall be
18 paid in accordance with the provisions of chapter 51
19 and subchapter III of chapter 53 of that title relat-
20 ing to classification and General Schedule pay rates,
21 but at rates not in excess of the maximum rate for
22 grade GS-15 of the General Schedule under section
23 5332 of that title.

1 (d) EXPERTS AND CONSULTANTS.—The Director
2 may procure temporary and intermittent services under
3 section 3109(b) of title 5, United States Code.

4 (e) STAFF OF FEDERAL AGENCIES.—

5 (1) IN GENERAL.—Upon request of the Direc-
6 tor, the head of any Federal department or agency
7 may detail, on a reimbursable basis, any of the per-
8 sonnel of that department or agency to the Commis-
9 sion to assist it in carrying out this Act.

10 (2) NOTIFICATION.—Before making a request
11 under this subsection, the Director shall give notice
12 of the request to each member of the Commission.

13 **SEC. 7. POWERS OF COMMISSION.**

14 (a) HEARINGS AND SESSIONS.—The Commission
15 may, for the purpose of carrying out this Act, hold hear-
16 ings, sit and act at times and places, take testimony, and
17 receive evidence as the Commission considers appropriate.
18 The Commission may administer oaths or affirmations to
19 witnesses appearing before it.

20 (b) POWERS OF MEMBERS AND AGENTS.—Any mem-
21 ber or agent of the Commission may, if authorized by the
22 Commission, take any action which the Commission is au-
23 thorized to take by this section.

24 (c) OBTAINING OFFICIAL INFORMATION.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), if the Chairperson of the Commission
3 submits a request to a Federal department or agen-
4 cy for information necessary to enable the Commis-
5 sion to carry out this Act, the head of that depart-
6 ment or agency shall furnish that information to the
7 Commission.

8 (2) EXCEPTION FOR NATIONAL SECURITY.—If
9 the head of that department or agency determines
10 that it is necessary to guard that information from
11 disclosure to protect the national security interests
12 of the United States, the head shall not furnish that
13 information to the Commission.

14 (d) MAILS.—The Commission may use the United
15 States mails in the same manner and under the same con-
16 ditions as other departments and agencies of the United
17 States.

18 (e) ADMINISTRATIVE SUPPORT SERVICES.—Upon
19 the request of the Director, the Administrator of General
20 Services shall provide to the Commission, on a reimburs-
21 able basis, the administrative support services necessary
22 for the Commission to carry out this Act.

23 (f) GIFTS AND DONATIONS.—The Commission may
24 accept, use, and dispose of gifts or donations of services
25 or property to carry out this Act, but only to the extent

1 or in the amounts provided in advance in appropriation
2 Acts.

3 (g) CONTRACTS.—The Commission may contract
4 with and compensate persons and government agencies for
5 supplies and services, without regard to section 3709 of
6 the Revised Statutes (41 U.S.C. 5).

7 (h) SUBPOENA POWER.—

8 (1) IN GENERAL.—The Commission may issue
9 subpoenas requiring the attendance and testimony of
10 witnesses and the production of any evidence relat-
11 ing to any matter that the Commission is empow-
12 ered to investigate by section 4. The attendance of
13 witnesses and the production of evidence may be re-
14 quired by such subpoena from any place within the
15 United States and at any specified place of hearing
16 within the United States.

17 (2) FAILURE TO OBEY A SUBPOENA.—If a per-
18 son refuses to obey a subpoena issued under para-
19 graph (1), the Commission may apply to a United
20 States district court for an order requiring that per-
21 son to appear before the Commission to give testi-
22 mony, produce evidence, or both, relating to the
23 matter under investigation. The application may be
24 made within the judicial district where the hearing
25 is conducted or where that person is found, resides,

1 or transacts business. Any failure to obey the order
2 of the court may be punished by the court as civil
3 contempt.

4 (3) SERVICE OF SUBPOENAS.—The subpoenas
5 of the Commission shall be served in the manner
6 provided for subpoenas issued by a United States
7 district court under the Federal Rules of Civil Pro-
8 cedure for the United States district courts.

9 (4) SERVICE OF PROCESS.—All process of any
10 court to which application is made under paragraph
11 (2) may be served in the judicial district in which
12 the person required to be served resides or may be
13 found.

14 **SEC. 8. TERMINATION.**

15 The Commission shall terminate 30 days after sub-
16 mitting a report under section 4(c).

17 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

18 (a) IN GENERAL.—There are authorized to be appro-
19 priated to the Commission \$5,000,000 to carry out this
20 Act.

21 (b) AVAILABILITY.—Any sums appropriated pursu-
22 ant to the authorization in subsection (a) shall remain
23 available until expended.

1 **SEC. 10. BUDGET ACT COMPLIANCE.**

2 Any new contract authority authorized by this Act
3 shall be effective only to the extent or in the amounts pro-
4 vided in advance in appropriation Acts.

5 **SEC. 11. PRIVACY PROTECTIONS.**

6 (a) DESTRUCTION OR RETURN OF INFORMATION RE-
7 QUIRED.—Upon the conclusion of the matter or need for
8 which individually identifiable information was disclosed
9 to the Commission, the Commission shall either destroy
10 the individually identifiable information or return it to the
11 person or entity from which it was obtained, unless the
12 individual that is the subject of the individually identifi-
13 able information has authorized its disclosure.

14 (b) DISCLOSURE OF INFORMATION PROHIBITED.—
15 The Commission—

16 (1) shall protect individually identifiable infor-
17 mation from improper use; and

18 (2) may not disclose such information to any
19 person, including the Congress or the President, un-
20 less the individual that is the subject of the informa-
21 tion has authorized such a disclosure.

22 (c) PROPRIETARY BUSINESS INFORMATION AND FI-
23 NANCIAL INFORMATION.—The Commission shall protect
24 from improper use, and may not disclose to any person,
25 proprietary business information and proprietary financial
26 information that may be viewed or obtained by the Com-

1 mission in the course of carrying out its duties under this
2 Act.

3 (d) INDIVIDUALLY IDENTIFIABLE INFORMATION DE-
4 FINED.—For the purposes of this Act, the term “individ-
5 ually identifiable information” means any information,
6 whether oral or recorded in any form or medium, that
7 identifies an individual, or with respect to which there is
8 a reasonable basis to believe that the information can be
9 used to identify an individual.